

REMARKS

Reconsideration of this application is respectfully requested.

In the Office Action, the Examiner rejects claims 1-5 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,918,675 to Smith in view of the photograph of the nail spacer, which was submitted in an IDS by applicants dated September 9, 2005.

As discussed with the Examiner during the telephone interview of January 12, 2006, the photograph of the nail spacer is not "prior art". The present application has a priority date of January 9, 2001. The photograph of the nail spacer is a current photograph of the invention that was offered for sale in early 2001 and is depicted in the "Copy of Original Nail Gun Label" also submitted in the same IDS.

Applicants respectfully submit that the photograph is not prior art to the present application, and therefore, the photograph can not be used in a 35 U.S.C. 103(a) rejection of the claims. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of claims 1-5, and respectfully request allowance of the claims.

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued.

Respectfully submitted,



Aasheesh V. Shravah
Registration No. 54,445